IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.670 OF 2005
WITH
CIVIL APPLICATION NO.502 OF 2005

Arvindkumar Nanubhai Padia ..Appellant.
Vs.
The Municipal Corporation of
Greater Mumbai ..Respondent.

...

Mr. M.R. Deshpande for the Appellant.
Ms. Geeta Joglekar for the BMC.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

16th November, 2005.

P.C. :

1. The City Civil Court has dismissed the Appellant's Notice of Motion by the impugned order dated 16th December, 2004. Earlier, the Appellant had filed Suit 6488 of 2002 in the City Civil Court in respect of a hut bearing No.125 situated at Janata Nagar Zopadpatti, Gamdevi Road, Malad. That structure was protected by an interim order. The dimensions of that structure were 10 ft. x 15 ft. The structure consisted of tin sheet walls and A.C. Sheet roof. The Municipal Corporation found that the Appellant had constructed a new structure in an open plot near Janata Nagar Slum colony consisting of tin sheet walls and of plastic paper roof and at the time of inspection the hutment was found to be locked.

In the affidavit in reply filed before the Trial Court in the Motion, it has been averred that the Appellant was found to have transferred the earlier structure and to have constructed a new structure. The Learned Trial Judge on reviewing all the material documents on the record has found that the electoral roll and the election identify card pertained to Hutment No.125, whereas the structure in question was an independent and newly constructed. The finding that the structure in question was newly constructed on an open plot of land and was unauthorized is prima facie, at an interlocutory stage, such as would not justify any interference in these proceedings. Counsel appearing for the Appellant has been unable to establish by any cogent evidence that the structure was same as which was constructed earlier. There is no merit in the Appeal which is accordingly dismissed.

Civil Application 502 of 2005 does not survive in view of the order passed in the Appeal from Order and is accordingly disposed of.